Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Waiver of Sections	)	WC Docket No. 18-143
54.1505(d)(6), 54.1508(b) and 54.1508(c)	)	
of the Commission's Rules	)	

To: The Commission

PR-USVI FUND COALITION
EMERGENCY REQUEST FOR WAIVER

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April 7, 2020

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Summary

Petitioners, a coalition of competitors who seek to enhance services to, and choice for, the residents of Puerto Rico and the U.S. Virgin Islands, call on the Commission to exercise its Section 1.3 authority to waive or modify the current letter of credit requirements mandated in the Uniendo a Puerto Rico and Connect USVI Fund ("PR-USVI Fund"). As this Petition demonstrates, such an action would be "for good cause shown" that "would not undermine the policy objective of the …[Fund]… and would otherwise serve the public interest."

Petitioners have demonstrated that no banks in Puerto Rico and Virgin Islands meet the rating requirements of the PR-USVI Fund and the record further reflects in light of previous economic uncertainty in the Territories as a result of natural disasters and the COVID-19 pandemic, mainland banks are unwilling to serve as a creditor. Petitioners are not opposed to appropriate demonstrations of credit worthiness, but as documented in this Petition, the current requirements are not difficult to meet, they are impossible. Barring petitioners from competing for these funds and offering the proposed service is not in the public's interest.

Petitioners simply request that the Commission exercise the same sensitivity to the viability of credit obligations it demonstrated in the recently adopted Rural Digital Opportunity Fund ("RDOF"). Petitioners ask for comparable accommodations by:

1. Significantly reducing the requirements of Section 54.804(c);

2. Maintaining the requirement of FDIC insured status but waiving the Weiss safety rating requirement for the issuing bank; and,

3. Waiving the requirement for a letter of credit commitment letter at the Stage 2 funding application stage.

By taking these actions, the Commission will increase the number of FDIC-insured banks that can issue letters of credit, reduce the value of the letters of credit to amounts the Commission has determined elsewhere strike an appropriate balance of interests, and relieve applicants from a near-term requirement to secure a letter of credit commitment in a time of extraordinary economic turmoil. Absent waiver, and in light of the lack of eligible Weiss-rated banks in the Territories and the deteriorating economic conditions, applicants otherwise eligible under the Commission's rules will not be able to compete for Stage 2 support.

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The broadband providers listed on Attachment 1 hereto (the "PR-USVI Fund Coalition" or "Coalition"), pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. §1.3, hereby respectfully seek waiver of Sections 54.1505(d)(6), 54.1508(b) and (c)(1)(ii) of the Commission's rules, 47 C.F.R. §§54.1505(d)(6), 54.1508(b) and (c)(1)(ii), to allow winners of Stage 2 Uniendo a Puerto Rico and Connect USVI Fund ("PR-USVI Fund") support to be relieved of certain letter of credit obligations in light of the Commission's adoption of different rules for the Rural Digital Opportunity Fund ("RDOF") programs and exigent circumstances resulting from the ongoing COVID-19 pandemic. First, the PR-USVI Fund Coalition asks that winning applicants be subject to the more lenient rules of recently adopted Section 54.804(c) that would significantly reduce the value of the letters of credit they would be required to obtain and maintain. Second, the Coalition seeks waiver of the requirement that the bank issuing the letter have a Weiss bank safety rating. Finally, in view of the current economic dislocations caused by the global COVID-19 outbreak, the Coalition seeks waiver of the requirement to submit a letter of credit commitment letter as part of the Stage 2 funding application, which may be due as early as June 2020. Waiver of these rules will increase the number of FDIC-insured banks that can issue letters of credit, reduce the value of the letters of credit to amounts the Commission has determined strikes an appropriate balance of interests, and relieve applicants from a near-term requirement to secure a letter of credit commitment in a time of extraordinary economic turmoil. Absent waiver, and in light of the lack of eligible Weiss-rated banks in the Territories and the deteriorating economic conditions, applicants otherwise eligible under the Commission's rules will not be able to compete for Stage 2 support.

The relief that the Coalition requests should be granted as soon as possible, and without the need for a Public Notice to elicit public comment. Time is of the essence as eligible providers are presently planning and preparing their Stage 2 applications, which currently must be submitted with commitment letters to demonstrate some tangible assurance that successful applicants will be able to obtain letters of credit. These requirements exist in an economic environment that is already challenging in the aftermath of Hurricanes Maria and Irma and the January 2020 earthquake in Puerto Rico,[1] and is worsening as the COVID-19 pandemic is causing rapid decline in the tourism-based economies that fuel these Territories. Given the urgency for applicants to obtain letter of credit commitment letters and create budgets for the networks they will be proposing, and the Commission's desire to encourage competition for Stage 2 funding, the Commission should grant this waiver request expeditiously in full and without the need for public comment that would delay action and undermine the Stage 2 application process. By granting the waiver the Commission would enable prospective applicants, before they file their applications, to account for the reduced burdens of obtaining a commitment letter and the carrying costs of letters of credit over the buildout term, and direct more of their requested support to funding actual deployment for resilient networks.

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[1] *See, e.g.,* Laura Sullivan, "FEMA Report Acknowledges Failures In Puerto Rico Disaster Response," NPR (July 13, 2018), *available at* https://www.npr.org/2018/07/13/628861808/fema-report-acknowledges-failures-in-puerto-rico-disaster-response.

Background

Each of the members of the PR-USVI Fund Coalition is eligible to compete for Stage 2 PR-USVI Fund support in the competitive process the Commission has established.[2] As a condition to receiving support, Section 54.1508(b) requires winning applicants to obtain one or more letters of credit, which are subject to draw if the recipient fails to meet a buildout milestone by 50 percent or more.[3] Each year, the amount of the letter of credit will increase to cover the amount of past disbursements of support plus the amount for the upcoming year. The Commission's rules allow for modest reductions in the amounts of letters of credit as the 60 percent and 80 percent buildout milestones are achieved and verified by USAC.[4] Pursuant to Section 54.1508(c)(1)(ii), a bank must have a Weiss bank safety rating of B- or better in order to be eligible to provide a letter of credit.

In the RDOF proceeding, the Commission responded to overwhelming record evidence presented by a diverse range of commenters that demonstrated the letter of credit requirements imposed upon CAF Phase II recipients have been counterproductive in critical respects.[5] Not only are these rules diverting funds intended for deployment of new service to the payment of substantial bank fees, they also constrain the ability of recipients to borrow funds to expedite delivery of supported voice and broadband services. This is because the cost to obtain and maintain a letter of credit is on the order of five percent of the value of the letter of credit – an

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[2] *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, Order and Order on Reconsideration, WC Docket Nos. 18-143, 10-90 and 14-58, 34 FCC Rcd 9109 (2019) ("*PR-USVI Order*").

[3] *See* 47 C.F.R. §54.320(c). The first buildout milestone is after Year Three, so the letters of credit are not subject to draw for the first two funding years.

[4] *See* 47 C.F.R. § 54.1508(b).

[5] *See Rural Digital Opportunity Fund*, Report and Order, WC Docket Nos. 19-126 and 10-90, FCC 20-5 (rel. Feb. 7, 2020) ("*RDOF Order*") at 44, ¶97.

amount that increases with each year – and is treated as a contingent liability on the books of the support recipient, thereby limiting the recipient's borrowing power.

To make matters worse, providers eligible for Stage 2 funding are finding it extremely difficult, if not impossible, to obtain assurances that they can obtain a letter of credit. As Critical Hub Networks, Inc. explained in a recent *ex parte* letter, none of three banks in Puerto Rico has a Weiss B- rating and therefore none is eligible to issue a letter of credit under the current rule.[6] The situation is the same in the USVI. Although Commission rules do not require a local bank to provide the letter of credit, U.S. mainland banks are unwilling to extend credit to Stage 2 eligible providers because of the economic conditions in the Territories, a situation exacerbated by the effects of the COVID-19 pandemic.

The Coalition members are looking forward to filing applications for Stage 2 support and seek this relief to ensure that the financial hurdles are not insurmountable. Expeditious waiver will increase the possibility of their participation and make more support available for deployment of resilient networks, for the benefit of Americans residing and working in the Territories.

Discussion

I. WAIVER OF WOULD BE CONSISTENT WITH COMMISSION RULES AND THE PUBLIC INTEREST

The Commission has clear authority under Section 1.3 to grant immediate relief based on the record established in the RDOF proceeding and the worsening global economic situation, which is having a particularly harsh impact in the Territories that have already suffered several previous economic shocks. Section 1.3 permits the Commission to grant a rule waiver "for good

[6] *See* Letter from Gerard Lavery Lederer, Counsel to Critical Hub Networks, Inc., to Marlene H. Dortch, FCC Secretary, WC Docket No 18-143 (filed Feb. 24, 2020).

cause shown, in whole or in part, at any time," including on its own motion without a formal request.[7] A waiver may be granted if the grant "would not undermine the policy objective of the rule in question and would otherwise serve the public interest," or in circumstances "where particular facts would make strict compliance inconsistent with the public interest."[8]

The Commission has already made such a finding by adopting a revised letter of credit requirements in the RDOF proceeding, including allowing recipients to reduce their letters of credit to one year of support when they have deployed to 20 percent of eligible locations within two years. The Commission expressly recognized in the *RDOF Order* "that the letter of credit rules, as originally proposed [i.e., the same rules that were imposed in and continue to apply to Stage 2 recipients], *would impose a disproportionate financial burden on support recipients and result in less funding going directly to broadband deployment*."[9] It is thus clear that the Commission believes that the updated requirements will not only cause no harm to its policy objective of "ensuring that universal service funding is protected," but that the revised approach strikes a better, more appropriate balance between this objective and "the interest of potential support recipients in minimizing their financial cost over the course of the deployment term," thereby serving the public interest.[10] Because each of the Coalition members is, by virtue of its

[7] 47 C.F.R. §1.3. For example, for the RBE and CAF programs, the Commission has, on its own motion, waived the requirements in Sections 54.202(a)(1)(ii) and 54.313 for recipients to file five-year plans. *See, e.g., Connect America Fund,* 29 FCC Rcd 8769, 8795, ¶77 (2014); *Connect America Fund,* 28 FCC Rcd 2051, 2054, ¶8 (WCB 2013).

[8] *Northeast Cellular Telephone Co., L.P. v. FCC,* 897 F. 2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969). *See also Connect America Fund*, Order, WC Docket No. 10-90, *et al.*, DA 20-217 (rel. Mar. 3, 2020), at 5&6, ¶¶8&11 (granting waiver to allow carriers to merge study areas in light of "special circumstances [that] warrant a deviation from the general rule and such deviation will serve the public interest").

[9] *RDOF Order* at 46, ¶105 (emphasis added).

[10] *Id.* at 47, ¶105.

eligibility for Stage 2, an experienced broadband provider with a history of reporting Form 477 data, similar treatment here is more than justified.

The facts also support a finding of "special circumstances." The Commission established the PR-USVI Fund in the wake of the September 2017 hurricanes that caused widespread devastation and destruction of communications infrastructure in the Territories. As part of this process, the Commission is making up to $680 million in Stage 2 support for fixed broadband services, and requiring networks to be resilient: "Given the significant likelihood of future storms, there is a significant likelihood of repeated devastating damage if the networks are not adequately hardened."[11] Although broadband networks have been rebuilt with the assistance of Stage 1 support,[12] the economy in the Territories continues to suffer.[13] For Puerto Rico, an October 2019 article stated that:

> GDP in Puerto Rico is down because of a vicious circle further spurred on by Hurricanes Irma and Maria. When economies fail, people leave for jobs and to make money they can send home to their families. That causes more collapse of the economy, driving additional people away. The dual hurricanes exacerbated the situation, but the problems already existed. Talk of emergency aid and how much Puerto Rico should be given only touches on the additional physical collapse. None of that would address the ongoing need for an economic jumpstart of the area.[14]

For the U.S. Virgin Islands, the Congressional Research Service observed in a February 2020 report that:

> Damage caused by two powerful hurricanes—Irma and Maria—that hit the USVI in September 2017 created additional economic and social challenges. Public

[11] *PR-USVI Order* at 9113 (citation omitted).

[12] *Id.* at n.23.

[13] *See, e.g.*, Puerto Rico's Economic Crisis, *available at* https://www.arcgis.com/apps/Cascade/index.html?appid=761529cfc93a4c5e975d796aac6ea28f

[14] Erik Sherman, *Puerto Rico's Economy Has Been Plummeting Like A Stone* (Oct. 18, 2019), *available at* https://www.forbes.com/sites/eriksherman/2019/10/18/puerto-ricos-economy-has-been-plummeting-like-a-stone/#28109b6a184e

> revenues, according to estimates based on USVI fiscal data, were halved after the two hurricanes. The USVI economy has relied heavily on tourism and related business activity, which made it more vulnerable to the effects of hurricanes than jurisdictions with more diverse economies. The severity of damage from Irma and Maria, and the subsequent disruption of the USVI tourism industry, suggest that a full economic recovery could take years.[15]

As a result, the challenge of obtaining letter of credit commitment letters and letters of credit is compounded. There are no banks based in the Territories that currently meet the Commission's Weiss-rated eligibility requirements, and mainland banks are reluctant to provide irrevocable letters of credit for construction projects in areas that are economically disadvantaged and face the prospect of future natural disasters that increase their exposure.

To make matters even worse, the evolving COVID-19 pandemic and economic downturn stemming from the loss of jobs and commercial activity is expected to tighten underwriting policies for new financial instruments as banking institutions focus on relief for existing loans and obligations. At the same time, the Coalition members are experiencing a substantial increase in consumer demand for bandwidth with demand shifting to residences as Americans practice social distancing and many are now working and learning from residential locations. This has not only created throughput constraints but has also increased the likelihood of non-payment from customers that have lost employment – a severe problem in the Territories that rely heavily on a tourism industry that is virtually closed down.

The unprecedented convergence of these events and circumstances epitomize "special circumstances," and therefore warrant relief from Sections 54.1505(d)(6), 54.1508(b) and 54.1508(c)(i)(ii). On March 26, the Commission approved a request by AT&T Services to use Dish Network spectrum in the 2180-2200 MHz band "to provide relief during the state-of

[15] Economic and Fiscal Conditions in the U.S. Virgin Islands, Congressional Research Service (updated Feb. 13, 2020), *available at* https://fas.org/sgp/crs/row/R45235.pdf.

emergency caused by the spread of the coronavirus throughout the United States, Puerto Rico and the U.S. Virgin Islands."[16] This action illustrates the Commission's acknowledgment that recent events require expeditious action. But even without these recent events, the Commission's adoption of more relaxed letter of credit rules based on CAF recipients' real-world circumstances should lead to the same finding that Stage 2 bidders would experience "disproportionate financial burden[s],"[17]

A. The Commission's Reasoning in Adopting the RDOF Letter of Credit Rules Applies to Stage 2 Recipients

In the Notice of Proposed Rulemaking that initiated the RDOF proceeding, the Commission originally proposed to adopt "the same letter of credit rules we adopted for the CAF Phase II auction."[18] This proposal was consistent with the Commission's repeated references in the *RDOF NPRM* to the CAF Phase II auction as the appropriate model for the next round of federal universal service support.[19] At the same time, the Commission noted that the CAF Phase II auction "provides a basis for lessons learned that can inform the letter of credit requirements" for the RDOF.[20] In particular, it observed "that winning bidders complained of the high cost of obtaining and maintaining a letter of credit, such that it would 'consume too much of the limited capital available to … [and] leave [in]sufficient funds for … [CAF Phase II auction] construction.'"[21] Accordingly, it specifically sought comment on alternative approaches,

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[16] *See* Email from Elizabeth Fishel, FCC, to Michael P. Goggin, et al., AT&T Services (Mar. 26, 2020).

[17] *RDOF Order* at 46, ¶105.

[18] *Rural Digital Opportunity Fund*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778, 6805, ¶84 (2019) ("*RDOF NPRM*").

[19] *See, e.g., id.* at 6770, ¶3; 6783, ¶15; 6784, ¶¶19 & 20; 6785, ¶23; 6787, ¶28; 6789, ¶32; 6796, ¶50; 6797, ¶56; 6802, ¶¶74 & 75; 6805-06, ¶84-88; and 6807, ¶¶90-92.

[20] *Id.* at 6806, ¶89.

[21] *Id.* at 6806-07, ¶89.

including whether it "should decline to require a letter of credit" for the RDOF auction altogether.[22]

In response to this request for input concerning the efficacy and the drawbacks of the existing letter of credit requirement, the Commission received significant comment from a broad range of parties, including large and small carriers serving rural areas, CAF II recipients, major trade associations, and lending institutions. Across this range of commenters, the concerns cited in the *RDOF NPRM* were repeated and amplified by numerous stakeholders. Responding to stakeholder concerns and recommendations, the Commission revised the originally proposed RDOF letter of credit rules in several important respects. The Commission had noted in the *RDOF NPRM* that the effect of its proposed rule would require that, for each year of the buildout term, recipients of support "modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum of the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year."[23] Instead of this approach, however, the Commission adopted a modified requirement that support recipients must maintain a letter of credit with a minimum value equal to only one year of support until USAC has verified that the recipient has deployed to all supported locations.[24] The new rule provides greater financial flexibility by slowing the required yearly increases in the value of the letter of credit, adding only half the value of support scheduled for disbursement in Years Two and Three, and capping the total amount required at a maximum of three years of support.

[22] *Id.* at 6807, ¶89.

[23] *Id.* at 6805, ¶85.

[24] *See RDOF Order*, Appendix A, Final Rules, §54.804(c)(1).

As an extra incentive for expedited buildout, the modified rules allow the value of the letter of credit to be reduced to the equivalent of one year of support for the entirety of the remaining buildout period if the recipient meets an optional buildout target of 20 percent of the supported locations before the end of Year Two.[25] The recipient must report the locations served to the HUBB portal and ask USAC to complete the verification process. If USAC verifies that the recipient has deployed service to 20 percent of the locations, then the recipient can reduce its letter of credit value to one year for the remainder of the buildout term provided it continues to meet all remaining mandatory buildout milestones.[26]

In revising the letter of credit rules, the Commission explicitly recognized "that the letter of credit rules, as originally proposed [*i.e.*, the same obligations imposed on PR-USVI Fund recipients], would impose a disproportionate financial burden on support recipients and result in less funding going directly to broadband deployment."[27] The same is true here, and to an even greater extent given the additional obligations of Stage 2 PR-USVI Fund recipients to build resilient networks that impose additional costs that do not apply to RBE, CAF and RDOF recipients. And because the application process has not yet begun, the Commission has the opportunity to provide greater financial certainty for Stage 2 applicants as they prepare the detailed budgets and network plans that are required both by the Commission and good business practices.

The rationale the Commission used to justify adoption of its RDOF letter of credit rules just a few months after adopting the *PR-USVI Fund Order* is, standing alone, reason enough for

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[25] *See id.* at §54.804(c)(1)(v).

[26] *See RDOF Order* at 45, ¶99.

[27] *Id.* at 46, ¶105.

the Commission to afford Stage 2 recipients the same benefits. The economic environment, exacerbated by the COVID-19 pandemic, and the need for subsidies to support the added cost of resiliency should remove any doubt on the course the Commission should take.

B. Economic Conditions and the Lack of Eligible Banks Justifies Waiver of the Bank Eligibility Rules

Section 54.1508(c)(1)(ii) requires that letters of credit be issued by banks having a Weiss bank safety rating of B- or better.[28] The Commission first adopted this requirement for CAF Phase II to "ensure that the bank has a rating that at a minimum demonstrates that the bank 'offers good financial security and has the resources to deal with a variety of adverse economic conditions.'"[29] The Commission also required that issuing banks also be FDIC-insured.[30] The Commission concluded that the adoption of these two qualifying criteria "achieves an appropriate balance between encouraging the participation in the auction, particularly of small entities, and protecting the public funds."[31] Identical rules were adopted for the RDOF program.[32]

Under normal circumstances, applying this rule might be appropriate. But at this time, there are "special circumstances" that justify waiver. There are no banks based in the Territories that meet the Weiss bank safety rating of B- or better. To the extent a local bank is Weiss-rated at all, currently the highest rating of any local bank is C. And while the Coalition appreciates that the Commission's rules do not require a local bank to provide the letter of credit, Coalition

[28] 47 C.F.R. § 54.1508(c)(1)(ii).

[29] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5993 (2016) (footnote omitted).

[30] *See id.*

[31] *Id.* The Coalition is not seeking waiver of this requirement.

[32] *See* 47 C.F.R. § 54,804(c)(2)(i).

members have found that U.S. mainland banks are unwilling to issue letters of credit for the Stage 2 program in light of the worsening economic downturn.

Absent a waiver of the Weiss bank safety rating requirement, the Coalition members and other eligible applicants may be unable to apply for Stage 2 funding because they will be unable to obtain commitment letters for the applications and secure letters of credit post-selection, even at the lower value requested herein. This would frustrate the Commission's objectives because eligible applicants would take the safe choice and simply elect not to bid. This would, in turn, leave more areas unfunded, especially rural municipios in Puerto Rico that would be less likely to be the subject of a Stage 2 application.

The Coalition understands that waiving Section 54.1508(c)(i)(ii) would require the Commission to assume a greater risk that, in the event of default requiring a draw on the letter of credit, the issuing bank may be less financially able to cover its value. However, this exposure would be mitigated by a reduction in the letter of credit as requested herein. Moreover, the economic conditions in the Territories today compel strong governmental action to promote broadband connectivity with resilient networks and to take steps to promote post-crisis economic recovery. In sum, the Commission should consider carefully the very likely scenario of a failed competitive process and re-balance its financial risk against the benefits of the Stage 2 program.

C. Current Economic Conditions Also Justifiy Waiver of the Requirement that Stage 2 Applicants Submit a Letter of Credit Commitment Letter with Their Applications

Although not expressly stated in the *PR-USVI Fund Order*, the Commission followed the practice of its other competitive high-cost programs in adopting the letter of credit commitment letter requirement to "giv[e] the Commission assurance that the long-form applicant will be able to obtain a letter of credit upon being deemed ready to authorize so that the Commission will be able to reclaim disbursed support if the long-form applicant becomes authorized and does not meet its obligations."[33] However, unlike the RBE, CAF Phase II and RDOF Phase I programs where letter of credit commitment letters are filed *only* by auction winners *after* the auction, *all* PR-USVI Fund applicants must provide the commitment letter *before* the selection of winning applicants as part of the application. This substantially accelerates the timing for submitting the commitment letter and establishes its submission as "table stakes" for eligible applicants.

On March 20, 2020, the Commission released a draft version of the Form 5634 required for Stage 2 fixed support applicants to seek new funding.[34] The draft form's implementation of new Section 54.1505(d)(6) provides that all applicants "must submit a letter from a bank acceptable to the Commission … committing to issue an irrevocable stand-by letter of credit, in the required form, to the applicant."[35] The Commission also notes that the Bureau is in the process of seeking Paperwork Reduction Act ("PRA") approval for the draft form and the form's instructions from the Office of Management and Budget, process initiated in early March.[36] Based on the typical 60-day review process, it would be expected that the Commission might receive PRA approval for the new form by mid-May, with the application filing deadline as soon as 30 days following release, as early at the latter half of June 2020.

As explained in detail above, multiple unanticipated events have placed Puerto Rico and the U.S. Virgin Islands, in particular, in unprecedented economic and societal circumstances. At

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[33] *Connect America Fund*, Order, 34 FCC Rcd 3239, 3242 (WCB 2019) ("*Casey Mutual Waiver Order*") (citation omitted) (granting waiver of the deadline for CAF Phase II applicant to submit letter of credit commitment letter).

[34] *See Public Notice*, "Wireline Competition Bureau Provides for Public Inspection a Draft Copy of Application Form 5634 for the Uniendo A Puerto Rico Fund and the Connect USVI Fund," WC Docket Nos. 18-143 and 10-90, DA 20-323, and Attachments (rel. Mar. 23, 2020) ("*PR-USVI Application PN*").

[35] *Id.*, Draft Form 5634 at 3, Question 31; New Section 54.1505(d)(6).

[36] *Id.* at 1 & n.3.

the present time, these Territories, along with many other parts of the United States, are under mandatory "stay at home" orders, prohibiting normal physical movement except for specified essential purposes. While many of these orders were initially announced as being for just a few weeks' time, many are entirely open-ended and are already expected to remain in place until at least June. In Puerto Rico, the restrictions are, of necessity, particularly strict. As NPR recently reported, "[t]he governor's decision to shut down businesses and order people inside was driven by necessity" because the local "health system collapsed after Hurricane Maria and remains fragile."[37] As a result, it would appear that, at best, the Territories, as well as other U.S. jurisdictions, including key financial centers such as New York and San Francisco, will just be emerging from a prolonged period of lockdown just at the time that such commitment letters would be due. This presents what is nearly a worst-case scenario for gaining timely access to the required letter of credit commitment letter necessary to submit a complete application.

Under these circumstances, it is entirely appropriate for the Commission to waive the commitment letter requirement provided for under Section 54.1505(d)(6). Doing so would be consistent with the *Casey Mutual Waiver Order*, where the Wireline Competition Bureau determined that failing to waive the requirement "may have precluded an otherwise qualified applicant from being authorized to receive support, delaying the provision of voice and broadband service in these areas."[38] The Coalition notes that here, the Commission has already

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[37] Adrian Florido, "Puerto Rico Enforces Strict Stay-At-Home Order," NPR (March 23, 2020), *available at* https://www.npr.org/2020/03/23/820009391/puerto-rico-enforces-strict-stay-at-home-order.

[38] *Casey Mutual Waiver Order* at 3243.

determined the limited pool of eligible bidders, and can use the competitive process to determine whether a particular applicant is "otherwise qualified."

Moreover, absent such relief, there is unlikely to be any substantial competition for Stage 2 funding, a result that would not be in the public interest. Waiving the requirement will allow applicants to assess their own long-term economic health and financial requirements as a threshold to participation without imposing an unnecessary and, at the moment, unusually daunting documentary burden. Waiver will allow the process to proceed on schedule. While there is some chance that winning applicants may have problems obtaining letters of credit at a later date, after support is provisionally awarded, taking this smaller level of risk is a better outcome than derailing the entire process at the start, given the unprecedented nature of the current disruptions. To the extent that later problems arise, the Commission may be able to ameliorate issues by providing modest additional latitude to successful funding recipients consistent with the overall goal of bringing high-speed resilient voice and broadband to the Territories from providers best positioned to offer service. Accordingly, waiver of the letter of credit commitment letter requirement is appropriate and should be granted.

II. THE COMMISSION SHOULD ACT EXPEDITIOUSLY

The Coalition members and other providers eligible for Stage 2 support are planning and preparing to file their applications, which are likely to be due within 30 days of the approval of the application form.[39] As part of this process, they have been contacting banks to determine whether and to what extent they might be able to provide letters of credit. Locally based banks do not meet the Commission's Weiss-rating standard, and mainland banks are very reluctant to

[39] *See PR-USVI Application PN*.

extend credit to companies operating in economically troubled Territories, especially as the COVID-19 pandemic has deteriorated financial markets generally.

If broadband providers eligible for Stage 2 funding are going to file applications, they will need to have certainty about their ability to fulfill their financial obligations if they are successful applicants. It would be imprudent of them to apply, be selected as the winning applicant, and then find out that they cannot obtain a letter of credit.

For these reasons, the Commission should act as soon as possible to grant the requested waivers. With applications likely due within the next 90 days or less and "special circumstances" created by the COVID-19 emergency expected to continue for many weeks, the Commission can ill-afford to commence a pleading cycle, review Comments and Reply Comments, review the record, and issue a decision. The Commission instead should act expeditiously based on its own expert assessment of the current conditions impacting PR-USVI Fund eligible applicants to provide these entities with the certainty they need now, consistent with the objectives of the PR-USVI Fund and the interests of Americans residing in the Territories to benefit from $680 million in subsidies to deploy high-speed, resilient broadband networks.

Conclusion

For the foregoing reasons, the PR-USVI Fund Coalition respectfully requests expeditious grant of its request for waiver of Sections 54.1505(d)(6), 54.1508(b) and 54.1508(c)(1)(ii).

Respectfully submitted,

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April 7, 2020

Attachment 1

Members of the PR-USVI Fund Coalition

Aeronet Wireless Broadband LLC

Broadband VI, LLC

Critical Hub Networks, Inc.

VPNet Inc.